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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

METRO FUEL LLC, a Delaware limited liability company,

Plaintiff,

VS.

CITY OF SAN FRANCISCO, a municipal corporation, COUNTY OF SAN FRANCISCO, a subdivision of the State of California, CITY AND COUNTY OF SAN FRANCISCO, a chartered California city and county and DOE 1 through DOE 10.

Defendants.

Case No. C07-6067 JSW

**[PROPOSED] ORDER GRANTING
DEFENDANT CITY AND COUNTY OF
SAN FRANCISCO'S MOTION FOR
JUDGMENT ON THE PLEADINGS**
Fed. R. Civ. P. 12(c)

Defendant City and County of San Francisco's Motion for Judgment on Pleadings came on regular hearing before the Court on June 13, 2008. Paul Fisher appeared on behalf of Plaintiff Metro Fuel LLC ("Metro Fuel"). Deputy City Attorney Thomas S. Lakritz appeared on behalf of the City and County of San Francisco ("the City").

After considering the papers submitted by the parties and the arguments of counsel, the Court grants the City's motion.

1 Metro Fuel's claim that San Francisco Planning Code, Article 6 violates the First Amendment
 2 fails, because the City may ban commercial advertising when the ban is based on esthetics and
 3 pedestrian and driver safety. *See Metromedia v. City of San Diego*, 453 U.S. 490 (1981).

4 Metro Fuel's claim that the inventory requirements of San Francisco Planning Code section
 5 604.2 violate the Fifth Amendment right against self-incrimination fails, because as a business
 6 organization Metro Fuel does not enjoy the constitutional privilege against self-incrimination
 7 encompassed by the 5th Amendment. *See California Bankers Ass'n v. Shultz*, 416 U.S. 21, 55 (1974);
 8 *United States v. White*, 322 U.S. 694, 698 (1944).

9 Metro Fuel's 42 U.S.C. § 1983 claim is time barred. Metro Fuel did not initiate this lawsuit by
 10 March 5, 2003, which is one year after the adoption of Proposition G. Nor did Metro Fuel allege any
 11 acts that occurred since November 30, 2005, that might give rise to a cause of action against the City.
 12 Furthermore, San Francisco's ban on new general advertising signs is rationally related to a legitimate
 13 government interest. *See Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico*,
 14 478 U.S. 328, 344 fn.9 (1986). Finally, Metro Fuel's procedural due process claim fails, because
 15 Metro Fuel does not have a vested right in erecting any new general advertising signs in San
 16 Francisco. *See Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 902-903 (9th Cir.
 17 2007).

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 19 Dated:

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 21 HONORABLE JEFFREY S. WHITE
 Judge of the U.S. District Court
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